

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Southern Communications Services, Inc.)	
d/b/a Southern LINC)	CC Docket No. 96-45
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	
)	
To: Wireline Competition Bureau)	
Wireless Telecommunications Bureau)	

**COMMENTS OF
RURAL LOCAL EXCHANGE CARRIERS**

The Rural Local Exchange Carriers (Rural LECs)¹ submit these comments to oppose the Petition of Southern Telecommunications Services, Inc. d/b/a Southern LINC for Designation as an Eligible Telecommunications Carrier in certain rural service areas in the State of Alabama (Petition).² Southern LINC has not demonstrated that it meets the statutory or public interest standards to be designated as an eligible telecommunications carrier (ETC). Southern LINC has indicated that it does not plan to serve the entire Ardmore Telephone service area as required by the statute, but it has not asked for, or demonstrated that the public interest would be

¹ The Rural LECs submitting these comments include TDS Telecommunications Corp. (TDS Telecom), parent company of Butler Telephone Company, Oakman Telephone Company, Inc., and Peoples Telephone Company, Inc., and the following Alabama Rural LECs: Ardmore Telephone Company, Blountsville Telephone Company, Inc., Brindlee Mountain Telephone Company, Castleberry Telephone Company, Graceba Total Communications, Inc., GTC, Inc., Gulf Telephone Company, Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., National Telephone Company, Inc., New Hope Telephone Cooperative, Inc., Otelco Telephone LLC, Ragland Telephone Company, Roanoke Telephone Company, Inc., and Valley Telephone Company, LLC.

² Petition, *Federal-State Joint Board on Universal Service, Petition of Southern Communications Services, Inc. d/b/a Southern LINC for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (filed Sept. 14, 2004; 1st Supp. Jan. 12, 2005; 2nd Supp. Jan. 21, 2005; Public Notice Feb. 1, 2005) (Petition).

served by, redefinition of the Ardmore Telephone service area.³ Accordingly, the Petition should be denied with respect to the Ardmore Telephone service area. In addition, the Petition does not demonstrate that the public interest would be served by designating Southern LINC as an ETC in the other rural areas served by the Rural LECs.

I. THE COMMISSION SHOULD APPLY THE CRITERIA DEVELOPED IN THE PENDING RULEMAKING PROCEEDING TO THE SOUTHERN LINC PETITION

As an initial matter, the Rural LECs urge the Bureau to evaluate the Petition in accordance with the criteria for ETC designation that are developed in the pending rulemaking proceeding addressing ETC designation issues. The Commission is currently considering a Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) recommending that the Commission adopt specific criteria for evaluating petitions for ETC designation.⁴ Numerous commenters have supported the adoption of either permissive or mandatory ETC designation criteria.⁵ A group of rural telephone associations and carriers, including TDS Telecom, has urged the Commission further to adopt detailed guidelines for the

³ Exhibit 1 to the Second Supplement to the Petition also suggests that Southern LINC does not intend to serve portions of the Otelco Telephone and Interstate Telephone service areas. However, the “rate centers” (we presume Southern LINC means “wire centers”) identified as unserved for these service areas are all served by other carriers (Skyline and Section are served by CenturyTel Telephone and Henager, Pisgah, Rainsville, Fyffe, and Geraldine are served by Farmers Telephone Cooperative). To the extent that Southern LINC does not plan to serve certain Otelco Telephone and/or Interstate Telephone wire centers but failed to correctly identify them, the Rural LECs further submit that Southern LINC should be denied ETC designation for those service areas for the reasons set forth above.

⁴ See Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (Notice) (seeking comment on Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (Recommended Decision)).

⁵ See, e.g., Comments of TDS Telecom, CC Docket No. 96-45, at 4-11 (Aug. 6, 2004); Comments of the National Association of State Utility Consumer Advocates, CC Docket No. 96-45, at 34-40 (Aug. 6, 2004); Comments of the Public Utilities Commission of Oregon, CC Docket No. 96-45, at 3-5 (Aug. 6, 2004); Comments of the United States Telecommunications Association, CC Docket No. 96-45, at 8-11 (Aug. 6, 2004); Comments of the Rural Telecommunications Associations, CC Docket No. 96-45, at 35-36 (Aug. 6, 2004); Comments of the State Telecommunications Associations and Rural Telephone Companies, CC Docket No. 96-45, at 6-9 (Aug. 6, 2004); Comments of the National Exchange Carrier Association, CC Docket No. 96-45, at 18-20 (Aug. 6, 2004) (all expressing support for federal guidelines specifying additional ETC eligibility requirements).

application of such criteria.⁶ Under the Communications Act, the Commission is required to issue a decision on the Recommended Decision before the end of this month.⁷ Accordingly, it is likely that new ETC designation criteria will be in place before the Bureau makes a decision on the Southern LINC Petition.

The Bureau here should apply any new criteria adopted in the ETC designation order to all pending ETC petitions, including the Southern LINC Petition. This is consistent with the approach the Bureau took when the Commission issued the *Virginia Cellular* and *Highland Cellular* orders adopting an interim standard for evaluating ETC petitions,⁸ and would ensure that the Bureau's decision on the Petition is consistent with the public interest as understood by the Commission at the time the decision is made. As it did after issuance of the *Virginia Cellular* order, the Bureau could, if necessary, give Southern LINC an opportunity to supplement its Petition with information attempting to demonstrate that Southern LINC meets any new criteria adopted by the Commission for a carrier seeking competitive ETC designation.

⁶ See *Ex Parte* Letter of WTA, ITTA, Various State Telecom Associations, TDS Telecom, and Fairpoint Communications, CC Docket No. 96-45 (Jan. 28, 2005); see also *Ex Parte* Letter of OPASTCO, CC Docket No. 96-45 (Feb. 1, 2005).

⁷ See 47 U.S.C. § 254(a)(2) (“[T]he Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.”).

⁸ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular*); Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”); Public Notice, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (rel. Apr. 12, 2004) (inviting parties with then-pending petitions for ETC designation to submit additional information showing how they satisfied the standards set forth in *Virginia Cellular* and *Highland Cellular*).

II. SOUTHERN LINC DOES NOT SATISFY THE STATUTORY OR PUBLIC INTEREST REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

The Southern LINC Petition does not meet either the statutory requirements or the interim *Virginia Cellular/Highland Cellular* public interest standard for ETC designation in the Alabama service areas served by the Rural LECs.

A. Southern LINC Does Not Intend To Provide Service Throughout The Designated Service Areas

The basic statutory requirements for any carrier seeking ETC designation are (1) to provide the supported services throughout the designated service area using its own facilities or a combination of its own facilities and resold service; and (2) to advertise the services throughout the service area using media of general distribution.⁹ Southern LINC has not demonstrated that it meets these requirements.

Although the original Petition merely described the counties in which Southern LINC sought to provide service as an ETC, the January 12 Supplement included a map showing the carrier service areas in which Southern LINC seeks ETC designation.¹⁰ A further Supplement filed on January 21 disclaimed any intention to serve certain wire centers, including the New Market wire center, which is one of three wire centers serving the Ardmore Telephone

⁹ 47 U.S.C. § 214(e)(1).

¹⁰ The map submitted with the January 12 Supplement did not entirely clarify the areas in which Southern LINC seeks ETC designation in Alabama. The map apparently was intended to show the Southern LINC licensed service territory in Alabama and the rural telephone company service areas within the Southern LINC territory in which Southern LINC seeks ETC designation. However, some Rural LECs – including National Telephone, Roanoke Telephone, and Valley Telephone – whose service areas fall partially or entirely within the Southern LINC licensed territory (and who serve at least some Alabama counties that were not excluded from the area in which ETC designation was sought in the original Petition) do not appear on the map. It is thus not clear whether Southern LINC is interested in obtaining ETC designation to serve part or all of these service areas or not. To clarify these issues, the Bureau should require Southern LINC, like all other petitioners for ETC designation, to identify the specific rural telephone company service areas (complete or partial) in which it seeks ETC designation.

service area.¹¹ Under the Communications Act, an eligible telecommunications carrier must provide service throughout the designated service area. In the case of a rural telephone company, the service area consists of the entire study area unless the Commission and the state jointly determine, taking into account the recommendations of the Joint Board, that the service area should be redefined.¹² Here, Southern LINC has stated that it intends to serve less than the entire Ardmore Telephone study area, but has not requested, or demonstrated that the public interest would be served by, redefinition of the Ardmore Telephone service area to allow Southern LINC to serve less than the entire study area. Accordingly, Southern LINC does not meet the statutory requirements for ETC designation in the Ardmore Telephone service area.

In addition, Southern LINC does not appear to provide service throughout all of the Alabama rural telephone company service areas in which it seeks full ETC designation. The Petition apparently seeks ETC designation throughout Southern LINC's *licensed* service territory in Alabama. However, Southern LINC's website includes a RF coverage map showing where Southern LINC in fact provides service, and the actual coverage area clearly is not as extensive as the licensed service territory.¹³ In addition, the zip code look-up feature on the coverage website indicates that Southern LINC does not offer service in at least portions of many of the rural telephone company service areas in which it apparently seeks ETC designation. For example, the Southern LINC website reports that service is not available in the zip code served

¹¹ Although the January 21 Supplement used the term "rate center," we presume that Southern LINC meant to identify *wire centers* it did not intend to serve. The Second Supplement also indicated that Southern LINC did not intend to serve portions of the Otelco Telephone and Interstate Telephone service areas. However, the rate centers identified as unserved for these service areas are all served by other carriers (Skyline and Section are served by CenturyTel Telephone and Henager, Pisgah, Rainsville, Fyffe, and Geraldine are served by Farmers Telephone Cooperative). To the extent that Southern LINC does not plan to serve certain Otelco Telephone and/or Interstate Telephone wire centers but failed to correctly identify them, the arguments in this Part II-A apply to those service areas as well.

¹² 47 U.S.C. § 214(e)(5).

¹³ The Southern LINC coverage map can be found at <http://www.southernlinc.com/netcoverage.asp> (last visited Feb. 15, 2005).

by the Castleberry Telephone wire center; in the zip codes served by the Walnut Grove and Snead wire centers in the Hopper Telecommunications service area; in the zip codes served by the Millry, Chatom, and Gilbertown wire centers in the Millry Telephone service area;¹⁴ and in the zip code served by the Ragland Telephone wire center.¹⁵ Although we recognize that Commission precedent does not require a petitioner seeking ETC designation to provide service throughout a service area prior to being granted ETC designation,¹⁶ the statute clearly requires the carrier to demonstrate that it provides some service in the designated service area and that it plans to use universal service funds to construct the infrastructure necessary to provide service throughout the designated service area. As discussed below, the Southern LINC Petition and Supplements contain no commitment or proposal to extend the Southern LINC network to provide service throughout the rural telephone company service areas in which Southern LINC seeks ETC designation.

Finally, it is not clear that Southern LINC will provide all the supported services even where the company offers service. For example, the Petition does not state that Southern LINC has met its Phase II E911 requirements in areas where public emergency service providers have requested E911 service. The Petition states that Southern LINC has met its Phase I requirements, that it has an obligation to meet Phase II requirements only upon request of a public safety answering point (PSAP) that has made arrangements for local delivery of wireless

¹⁴ The Southern LINC website also reports no service to the Frankville, Silas, and Fruitdale zip codes in the Millry Telephone service area..

¹⁵ The website further reports that the zip codes of at least 7 of the 11 wire centers of Peoples Telephone are not served by Southern LINC. The City of Cherokee (35616) in the National Telephone service area also does not have coverage, but it is unclear whether Southern LINC is seeking ETC designation there.

¹⁶ See *Virginia Cellular* ¶ 23 (citing Declaratory Ruling, *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, 15 FCC Rcd 15168, 15175 ¶ 17 (2000), recon. pending).

caller location information, and that fourteen Alabama PSAPs have requested Phase II service.¹⁷

However, Southern LINC does not take the final step and state that it has actually met its Phase II requirements to the PSAPs that have requested such service.¹⁸

B. The Public Interest Would Not Be Served By Designating Southern LINC As An Eligible Telecommunications Carrier In The Areas Served By The Rural LECs

Under *Virginia Cellular* and *Highland Cellular*, the Bureau evaluating a petition for ETC designation must “weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”¹⁹ Applying this standard, the Petition does not demonstrate that designating Southern LINC as a competitive ETC in the Alabama rural service areas would serve the public interest.

With respect to the benefits of Southern LINC’s service, the Petition offers only conclusory statements about the benefits of competitive choice and mobile service. The Petition fails to acknowledge that Southern LINC already provides service in the designated areas and that other wireless carriers already serve many of these areas as ETCs.²⁰ The Petition does not

¹⁷ Petition at 7-8.

¹⁸ *Id.* at 8. The attached Declaration also states only that “Southern LINC *will* comply with all Phase II E-911 requirements.” Exhibit 3, Declaration ¶ 7e. There is no affirmative statement that Southern LINC currently is in compliance with these requirements.

¹⁹ *Virginia Cellular* ¶ 28; *Highland Cellular* ¶ 22.

²⁰ For example, Nextel Partners has been designated as a competitive ETC serving the Butler Telephone, Castleberry Telephone, Graceba Communications, GTC, Gulf Telephone, Millry Telephone, and Mon-Cre Telephone service areas. See Order, *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Florida, Georgia, Pennsylvania, Tennessee, and Virginia, Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, CC Docket No. 96-45, DA 04-2667 (rel. Aug. 25, 2004, amended by Erratum rel. Sept. 13, 2004). CellSouth

(continued...)

make any showing that Southern LINC's "universal service" offering would offer any new, unique benefits that are not already available in the designated service areas.

The Petition also fails to offer detailed information about the scope of Southern LINC's coverage of the designated service areas or to provide detailed buildout plans demonstrating Southern LINC's commitment to provide quality service throughout the designated service area. Instead, Southern LINC states that it "does not currently have specific construction plans in place for implementation after obtaining ETC designation," and that "[t]he priority under which the construction plan is to be undertaken is subject to change depending upon requests for service and other market factors."²¹ Southern LINC claims to be "committed to continue to enhance and improve its facilities in Alabama," but does not commit to undertake such improvements and enhancements in rural, high-cost areas or areas that currently are poorly served by Southern LINC's network. These statements simply do not evidence a genuine commitment to provide high-quality, "universal" service throughout the rural service areas in which Southern LINC seeks ETC designation.

(continued...)

has been designated as an ETC in the Castleberry Telephone, Gulf Telephone, Millry Telephone, and portions of the Butler Telephone service areas and RCC has been designated as an ETC in the GTC, Moundville Telephone, Roanoke Telephone, and portions of the Butler Telephone, Interstate Telephone, Millry Telephone, and Mon-Cre Telephone Cooperative service areas. Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Cellular South Licensee, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317 (Dec. 4, 2002); Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181 (Nov. 27, 2002). TracFone Wireless has petitioned for ETC designation throughout Alabama and Corr Wireless has a pending petition seeking ETC designation in the Ardmore Telephone, Blountsville Telephone, Butler Telephone, New Hope Telephone, Otelco, and Peoples Telephone service areas. See Petition, *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (filed Nov. 9, 2004); Petition, *Federal-State Joint Board on Universal Service, Petition of Corr Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (filed May 13, 2003).

²¹ Petition at 12.

Finally, the Petition again offers only a conclusory statement that granting the Petition will have “minimal” financial impact on the Universal Service Fund.²² The Petition fails to acknowledge that a number of the designated rural service areas are already served by more than one ETC.²³ Commenters in the pending ETC designation proceeding have recognized that designating multiple competitive ETCs in rural high-cost areas may not be the most efficient way to deploy the limited resources of the Fund.²⁴ In addition, designating multiple ETCs in a single rural service area clearly has a cumulative impact on the Fund. These issues must be considered in evaluating whether the public interest would be served by designating an additional ETC in a rural service area. Here, in conjunction with the other concerns identified above, they weigh strongly against designating Southern LINC as an ETC in the areas served by the Rural LECs.

²² *Id.* at 16.

²³ *See supra* note 20.

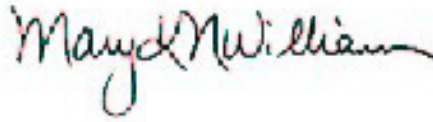
²⁴ *See, e.g.*, Comments of the Alaska Telephone Association, CC Docket No. 96-45, at 4 (Aug. 6, 2004) (“Perhaps the first question that should be asked by any regulatory body in the consideration of an ETC application should be whether there are any unserved areas and, if so, what is the most cost-effective method to serve them. The additional funding for infrastructure extension to an ILEC with carrier of last resort (‘COLR’) responsibility might have a comparatively miniscule effect on the universal service fund when compared with the designation of a competitive ETC for the same area.”); Comments of the Coalition of State Telecommunications Association and Rural Telephone Companies, CC Docket No. 96-45, at 15-16 (Aug. 6, 2004); Comments of CenturyTel, Inc., CC Docket No. 96-45, at 17-18 (Aug. 6, 2004).

CONCLUSION

For the foregoing reasons, Southern LINC has not demonstrated that it meets the statutory or public interest requirements for ETC designation in the Rural LEC service areas in Alabama. Accordingly, the Petition should be denied.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORP.

A handwritten signature in blue ink that reads "Mary Newcomer Williams". The signature is written in a cursive style with a large initial 'M'.

By: Mary Newcomer Williams
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel.: 202-662-6000
Fax: 202-662-6291
Counsel to TDS Telecom

Mark D. Wilkerson, Esq.
Leah S. Stephens, Esq.
Wilkerson & Bryan, P.C.
405 South Hull Street
Montgomery, AL 36104
Tel.: 334-265-1500
Counsel to the Alabama Rural LECs

February 15, 2005